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and Other Cruel, Inhuman
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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1992

Addendum

SENEGAL*

[27 March 1995]

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* The initial report submitted by the Government of Senegal is contained in document CAT/C/5/Add.19; for its consideration by the Committee, see documents CAT/C/SR.44 and 45 and the Official Records of the General Assembly, Forty-fifth session, Supplement No. 44 (A/45/44), paras. 376-405.

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I. INFORMATION ABOUT THE GENERAL LEGAL FRAMEWORK FOR THE APPLICATION OF THE CONVENTION

1. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by the United Nations General Assembly on 10 December 1984. After signing it, the Republic of Senegal ratified it on 26 August 1986. The Convention entered into force on 26 June 1987.

2 The Senegalese Constitution does not expressly define torture. Nevertheless, inasmuch as article 6 declares that the human being is sacred and that it is the duty of the State to protect the human being, it implicitly condemns the practice of torture in Senegal. Moreover, although torture is not defined in the Constitution, it is referred to in article 288 of the Penal Code as an aggravating circumstance when it precedes or causes the death of a person. In this case, the text lays down that the perpetrator of such a crime may not plead any extenuating circumstances and is liable to capital punishment. If the act of torture does not cause the victim's death, the statutory sentence is life imprisonment.

3. Articles 106 et seq. of the Penal Code make it an offence for public servants and other officials to use torture when carrying out the lawful arrest or detention of persons and impose prison sentences and fines in this regard.

4. Article 59 of the Code of Criminal Procedure provides for disciplinary action against and even the prosecution of members of the police force who torture persons held in custody in the premises of their units.

5. The matter of cruel, inhuman or degrading treatment has also received careful consideration in Senegalese legislation. For example, a death sentence must be carried out in the privacy of a detention centre. It may not be advertised in the press and the executed criminal's body must be returned to his family on request.

6. The Republic of Senegal is a party to other international human rights instruments which likewise prohibit torture and which include:

The International Covenant on Civil and Political Rights;

The International Covenant on Economic, Social and Cultural Rights;

The International Convention on the Elimination of All Forms of Racial Discrimination;

The International Convention on the Suppression and Punishment of the Crime of Apartheid; and

The Convention on the Elimination of All Forms of Discrimination against Women.

7. With regard to the position of the Convention against Torture in the national hierarchy of laws, reference must be made to article 79 of the Constitution, which gives international instruments ratified by Senegal

precedence over internal law. Once an international instrument is ratified, it therefore becomes an operative part of internal law and may be directly cited before all national courts (of first instance, appeal and cassation).

8. In Senegal, the authorities empowered to ascertain whether torture has occurred or to receive complaints on this subject are primarily the judicial authorities, particularly the Government Prosecutor, who, under articles 55 et seq. of the Code of Criminal Procedure, is instructed to supervise arrangements for custody in police stations.

9. Similarly, under article 12 of the said Code, it is the duty of the Government Attorney at the Appeal Court to supervise the action of the judicial police throughout the national territory.

10. Other administrative authorities, starting with the Minister of Justice, who is the head of the Government Prosecutor's department, are responsible for supervising the enforcement of criminal law in this regard.

11. In 1991, an ombudsman was appointed to receive all complaints from members of the public concerning injuries resulting from the action of Government departments and the Executive in general.

12. Several cases of torture (to which we will refer below in this report) have thus been brought to the attention of the authorities, which have taken the appropriate action.

13. To this end, a victim of torture may lodge a complaint with the Government Prosecutor or the Government Attorney at the Appeal Court because of the roles they play in the functioning of the judicial police at the regional and national levels. A victim may:

(a) Appear in person before the investigating judge to lodge a complaint and bring a criminal indemnity action. This automatically sets the public right of action in motion, even if the Government Prosecutor's Office does nothing or is opposed;

(b) Send his complaint to the Minister of Justice in his capacity as head of the Government Prosecutor's Office;

(c) Or, lastly, lodge a complaint with the ombudsman, who may request explanations from the Minister of Justice as the person in charge of the administration of criminal justice.

14. The Convention against Torture applies at all times in Senegal, where there are no major obstacles to its implementation. It is true that, in recent years, the police have often been accused of torture during investigations. Once these cases were brought to the attention of the competent authorities, they formed the subject of judicial inquiries.

15. When the ombudsman receives a complaint of this nature, he immediately contacts the Minister of Justice in the latter's capacity as head of the Government Prosecutor's Office and often gives him a deadline, usually of two weeks, in which to reply.

16. The consideration of the general legal framework for the application of this Convention would be incomplete without reference to the reorganization of the courts in May 1992, when the Supreme Court ceased to exist. This high court, which was set up immediately after independence was proclaimed, had two main functions. The first was to unify the positive law which applied in Senegal at that time. During the colonial period, the colonial authorities, faced with the resilient nature of Islamic customary law, were forced to take account of it by codifying it and applying it to the personal status of "natives", who could not obtain French nationality. Its second function was related to the unification of the court system, as the existence of two types of applicable law had led to the creation of a category of courts responsible for applying customary, traditional law.

17. Thus, when it first became independent, Senegal had two systems of courts applying two types of law (modern and customary). Thirty years later, the authorities decided to abolish the Supreme Court, as it had achieved its aims, and to replace it with three new courts. The thinking behind this decision was also that the position with regard to the country's courts should be in keeping with the rule of law. This led to the amendment of the Constitution so that new courts could be set up. These are:

(a) The Constitutional Council, responsible for ensuring the constitutionality of all legislation and of proceedings relating to presidential and parliamentary elections, while supervision of the elections is a matter for the Court of Appeal;

(b) The Council of State, responsible for ensuring the legality of administrative acts and for remedies of illegality when an administrative act is prejudicial to a citizen. It also audits the accounts of public authorities. It is composed of two sections;

(c) The Court of Cassation, which constitutes the appeal court for any infringements of civil, commercial, social and criminal law. It is composed of three chambers and hears all appeals in these four areas.

18. The judicial reform of May 1992 entered into force immediately and all these three high courts are now functioning to the satisfaction of the public.

19. In order to conclude this section on the judicial reform, it is necessary to say something about the Judicial Service Commission, which was also reorganized at the same time. It now consists of judges and members of the Government Prosecutor's Department and, above all, a board of three members of the State legal service who are elected by their peers. Although it is chaired by the President of the Republic, the Judicial Service Commission is the main organ guaranteeing the independence of the judiciary and guiding the careers of all members of the State legal service.

20. Lastly, mention must be made of the establishment in 1991 of the ombudsman's department, which, in the space of three years, has been able to satisfy the Senegalese people's need for assistance in its often difficult relations with its Government, without recourse to legal proceedings, which may be lengthy and expensive.

II. INFORMATION ABOUT THE SUBSTANTIVE PROVISIONS OF THE CONVENTION

21. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has several characteristics which make it different from other international instruments of the same kind. First, it requires States to prohibit torture in their national legislation and, at the same time, explicitly rules out the justification of such practices on the grounds of due obedience based on an order from a superior officer or of any exceptional circumstances. Secondly, it provides for the prosecution and trial of torturers in all other States parties to the Convention. Thirdly, it allows for the possibility of an international investigation when it has been proved that officials of a State systematically practise torture.

22. These characteristics must be known to all law enforcement personnel before and after the submission of the periodic report of a State party, like ours, which ratified this Convention even before it entered into force in order to demonstrate its commitment to the common ideal of human rights.

Article 1

23. The first article of the Convention defines torture as it is understood by the international community. The definition given in the Convention must be duly incorporated in the national legislation of each State party.

24. Senegal has not yet embodied this definition in its national legislation, despite the promises made by its representative when the initial report was submitted. Nevertheless, when the bill amending the Penal Code was drawn up, this definition was included in the text, which has not yet gone through the entire administrative and parliamentary adoption process.

25. In 1994, the Minister of Justice set up a national law reform committee, one of whose duties it was to bring our national legislation into line with our international commitments, i.e. the human rights covenants and conventions we have signed. The committee is at work on this task, but has not yet submitted its conclusions for action.

26. Despite the delay in incorporating this definition in our national legislation, the latter does contain several provisions on torture. These are, inter alia:

(a) Article 288 of the Penal Code, which makes torture an aggravating circumstance when handing down a sentence for intentional homicide, which is punishable by the death sentence or life imprisonment, depending on whether the victim has died;

(b) Article 106 of the Code of Criminal Procedure relates to the torture by judicial police officers of suspected criminals while they are in custody.

27. The author of this report will not fail to remind the competent authorities that we promised the Committee against Torture that we would introduce the definition set forth in the Convention in our national legislation.

Article 2

28. Torture is implicitly prohibited in Senegalese law. Article 6 of the Constitution states that the human being is sacred and that it is the duty of the State to protect the human being. The above statement is justified by the precautions taken with the detailed regulations governing the Executive's handling of exceptional circumstances, which law enforcement agencies may use as a pretext for engaging in acts of torture. These exceptional circumstances include:

(a) Emergency powers under article 47 of the Constitution

These are the powers which the Constitution gives the President of the Republic to deal with situations which threaten the proper functioning of public institutions. In this connection, the Constitution lays down several conditions designed to ensure that these powers are not misused. First, there must be a serious threat to the proper functioning of public institutions, which must also be observed by Parliament, the speaker of which has been informed by the Head of State. The National Assembly must convene automatically, if it is not in session, to monitor the legislative measures adopted by the President of the Republic and subsequently to ratify them because they lapse if they are not submitted to it within two weeks. The Assembly may not be dissolved during the exercise of emergency powers. In the exceptional case where the National Assembly is not in place, it falls to the Constitutional Council to rule on the constitutionality of the measures. If acts of torture are found to have been ordered as part of these measures, they are denounced by Parliament or the high court.

(b) State of emergency and state of siege

In the event of serious threats of disturbances of public order, for any reason, the President of the Republic manages the country's institutions and services by means of these measures. The law governing these two measures contains extremely detailed precautions to ensure that the proclamation of a state of emergency or state of siege may not be used as a pretext to carry out acts of torture on members of the population. For example, under Act No. 69-29 of 29 April 1969, a decree proclaiming either of these states ceases to be valid after 12 days. Furthermore, the National Assembly convenes automatically, if it is not in session, to monitor the measures taken and the handling of these states of exception by the Executive or to extend the duration of the decree proclaiming them beyond the 12-day limit. A supervisory committee is likewise set up to monitor the application of measures taken in connection with a state of emergency and any person whose fundamental rights have been infringed may refer a matter to it. A state of emergency precludes a state of siege, i.e. the President of the Republic may not proclaim both at the same time.

(c) Requisitioning of persons and property

Although the proclamation of a state of emergency makes it possible to requisition persons or their property in order to maintain public services, this may not under any circumstances be used as a pretext for torturing members of the population. The main aim is to requisition persons whose

activities are vital to the maintenance of public services. The above-mentioned supervisory committee is also competent to decide on any violations of rights before legal proceedings take place.

(d) Due obedience and superior orders as pretexts for torture

Law enforcement agencies frequently invoke an order from a superior to justify the cases of torture of which they are accused and, in doing so, they cite article 315 of the Penal Code. This text refers to the justification of due obedience or an order from a superior officer to relieve a person of criminal responsibility. In this respect, the Senegalese courts unanimously hold that no order from a superior officer can justify the practice of torture or exonerate those guilty of such acts. In 1987, seven police officers were therefore sentenced by the Dakar court to imprisonment and fines for the offence of torture and it rejected their plea that they had been obeying an order from a superior officer. As far as due obedience is concerned, there are no legal provisions in Senegal which authorize the practice of torture.

Article 3

29. No State party to the Convention may return or expel a person to a place where there are reasonable grounds for believing that he would be in danger of being tortured. In this respect, Senegalese legislation (Act No. 71-10 of 25 January 1971 on conditions for the admission and temporary residence of foreigners) places nationals and foreigners holding a lawful residence permit on an equal footing in respect of freedom of movement and the choice of a place of residence throughout the national territory, subject to the requirements of public order.

30. Decree No. 71-860 of 28 July 1971, adopted pursuant to the above-mentioned Act, contains detailed regulations on the procedure for expelling a foreigner. While the procedure is a matter for the Minister of the Interior, who acts in this case on the basis of an order issued on the grounds of the requirements of public order or national security, an appeal may be lodged to have this order set aside and expulsion or return are suspended for the duration of the proceedings.

31. A foreigner who is expelled is protected from any threat of torture by being able to choose his country of destination.

32. Refugees receive special protection under Senegalese law. First, they are granted refugee status by a decision of a committee chaired by a senior judge. Act No. 68-27 of 24 July 1968 on refugee status gives refugees the same economic and social rights as nationals, once they have been granted such status. A refugee may be expelled from Senegal only for urgent reasons of national security and after the above-mentioned committee has expressed its opinion. An appeal may be lodged against the decision of this body on the grounds that it has acted ultra vires. Furthermore, under this Act, the deadline for lodging an appeal and the appeal itself have a suspensive effect. Similarly, whenever expulsion is to be carried out, the law allows a refugee a reasonable length of time to try to obtain admission to another country.

33. The same concern to ensure that persons admitted to the national territory are protected from torture exists in the text governing extradition to Senegal and in the (bilateral and multilateral) international instruments on judicial cooperation between our country and friendly States. All these documents prohibit extradition for political or politically motivated offences (Act No. 71-77 of 28 December 1977 on extradition). Ruling out extradition for political offences likewise offers protection against torture to persons wanted by their States for offences which come under ordinary law, but involve an element of political revenge.

34. Senegal has concluded bilateral and multilateral agreements on legal cooperation with some 20 States. We note, for example, that article 3 of the Convention is linked to the contents of articles 12 and 13 of the International Covenant on Civil and Political Rights, article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination and article 15 of the Convention on the Elimination of All Forms of Discrimination against Women.

Article 4

35. In Senegal, offences are divided into:

(a) Crimes punishable by the death penalty or life or long-term imprisonment;

(b) Special offences punishable by 5 to 10 years' imprisonment and a fine; and

(c) Minor offences punishable by one month to five years' imprisonment.

36. In Senegalese law, torture is not a specific offence, but the references to it in the Penal Code place it:

(a) In the category of a crime punishable as such (art. 288);

(b) In the category of a special offence (arts. 106 to 113 and 334), punishable by 5 to 10 years' imprisonment.

37. Members of the police force or gendarmerie who have carried out torture which has been brought to the attention of the competent judicial authorities by means of a complaint are automatically prosecuted. The list of cases is very long and can be supplied to the Committee in due course.

38. Members of the police force or gendarmerie who have engaged in torture are also brought before a disciplinary board in accordance with the provisions of the statutory texts applicable to them. In this connection, the Government of Senegal has instituted a monthly meeting between the Ministers heading the Departments of Justice, the Interior and the Armed Forces (Gendarmerie). During these meetings, all cases of judicial and disciplinary proceedings against members of the forces under the authority of these ministers are

considered one by one and a decision is always taken to impose either a judicial or a disciplinary penalty. These meetings are greatly appreciated by the authorities, as they make it possible to monitor the activities of the police and gendarmerie in their relations with citizens in general.

Article 5

39. The territorial jurisdiction of Senegalese criminal courts is strictly regulated by the Code of Criminal Procedure. For example, under article 664 of the Code, a Senegalese criminal court may hear all cases involving serious offences committed abroad, provided that:

(a) The offence is punishable in Senegal;

(b) The offender has not been tried and sentenced abroad;

(c) The offender has not served his full sentence or been pardoned or amnestied abroad.

40. Senegalese courts apply internal law to lesser offences, provided that they are classified in the same way in Senegal. Under article 666 of the Code of Criminal Procedure, when the offence has been committed abroad, the victim must file a complaint or the offence must be officially reported by the authorities of the State in question. In the latter case, proceedings may be instituted only at the request and at the discretion of the Government Prosecutor. Under article 664 of the Code of Criminal Procedure, offences against State security or against mankind automatically come within the jurisdiction of Senegalese criminal courts.

41. Members of the police force and gendarmerie who are guilty of acts of torture are tried by regional correctional courts. Officers and senior officers of the armed forces are tried by a special chamber of the Regional Court of Dakar composed of professional judges and officers of the same rank as that of the offender. This court hears the case as court of first and last instance and the convicted person has no remedy of appeal.

42. The legal provisions described above do not in any way hinder the prosecution of torture offences committed in Senegal or abroad and are therefore in keeping with the Convention against Torture.

Article 6

43. The aim of the Convention is to ensure that a person who has committed torture and is present in the territory of a State party is arrested, so that he may answer for the acts of which he is accused. However, this measure must not be used as an opportunity to torture the accused person, who must benefit from all guarantees of due process in accordance with the general principles of human rights.

44. In this respect, Senegalese law is beyond reproach at the procedural level because, when a person who has committed an offence abroad is present in its territory, he can be arrested only at the request of a foreign State. This State must justify its request by means of an international arrest

warrant stating the crimes of which the person is accused and containing the full version of the applicable texts, as well as the arrest warrant, with a view to possible extradition. This international warrant is given to a police officer who arrests the fugitive and draws up a report establishing his identify.

45. The police officer presents the fugitive and the police report to the Government Prosecutor, who questions the suspect about his identity to ascertain that the warrant really applies to him. He orders the fugitive's imprisonment, pending extradition, at the nearest detention centre. He notifies the person's nearest consulate or embassy and informs it that it may contact its national.

46. The Government Prosecutor forwards the file through official channels to the Minister of Justice, so that it may be referred to the Indictments Chamber for an opinion on extradition. The rights of the defence are fully guaranteed throughout this procedure, as the fugitive may be counselled by a lawyer. If this court hands down a favourable decision, the Minister of Justice then draws up a draft order authorizing extradition and submits it for signature to the Head of State. The order places the fugitive at the disposal of the requesting State and indicates that it has one month in which to transfer him. Once this deadline has expired, the fugitive is automatically released and cannot be arrested again for the same offences.

47. When extradition is refused and, on the basis of the evidence, the fugitive is again placed at the disposal of the Government Prosecutor's department, it investigates the offences of which he is accused and, in necessary, institutes proceedings against him in accordance with the rules of ordinary law.

Article 7

48. If a person who has engaged in torture abroad is not extradited, he is prosecuted following a preliminary investigation conducted by a judicial police officer. On the basis of the police report on the offences in question, the Government Prosecutor institutes judicial proceedings, either through an application to the investigating judge to open an investigation and issue a committal warrant or by deciding to bring the accused person directly before the court dealing with flagrante delicto cases, when the facts do not require any particular investigation. In this case, the committal warrant is issued by the Government Prosecutor himself.

49. In all cases, the accused benefits from all the safeguards associated with the rights of the defence (right to assistance by legal counsel, to apply for bail, to produce defence witnesses, to ensure that they are heard, to be tried by an impartial court within a reasonable period of time and to all possible ordinary or special remedies available in Senegal) (application for judicial review).

Article 8

50. The extradition procedure has just been described in the above section on article 6. It should nevertheless be pointed out that Senegal has two types of extradition procedure, one conventional and the other, non-conventional or ordinary. The first is based on bilateral and multilateral judicial

cooperation conventions with other African States (22 in all), while the second, ordinary procedure is based on Act No. 71-77 of 28 December 1971 on extradition and applies to all requests for extradition from States with which Senegal does not have a judicial cooperation convention.

51. The conditions for extradition are identical under both procedures:

(a) The offences in question must be defined and carry criminal or correctional penalties of at least two years' imprisonment;

(b) The offences must be punishable under Senegalese law;

(c) The offences must not be political or politically motivated.

52. It goes without saying that torture, as defined above, certainly falls into the categories of offence providing a legal basis for extradition from Senegal to a foreign country.

Article 9

53. Senegal is one of the few countries on the African continent which affords a great measure of judicial assistance, especially in terms of prosecution. For example, with regard to law enforcement services, Senegal is a member of the International Criminal Police Organization (INTERPOL) and, in this connection, maintains a wide network of contacts with all countries in the world in the field of exchanges of information, evidence in criminal proceedings and the arrest of offenders of all kinds.

54. Mutual judicial assistance on the basis of conventions takes the form of:

(a) International requests for judicial assistance from other courts;

(b) Exchanges of information about the sentences handed down against foreign nationals with a view to inclusion in the central police record;

(c) Proceedings for the extradition of offenders;

(d) Proceedings for authority to enforce sentences delivered abroad;

(e) Exchanges of information about the civil status of persons being prosecuted; and

(f) Procedures for the enforcement of sentences.

This mutual judicial assistance is provided on the basis of judicial conventions, but it may be given even if no such conventions exist (e.g. judicial cooperation with Italy or Germany).

55. In this respect, we take account of the provisions of article IV, paragraph 1, of the International Convention on the Suppression and Punishment of the Crime of Apartheid and of article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, which have been ratified by Senegal and which deal with this question of mutual judicial assistance.

Article 10

56. Ten years ago, the Senegalese authorities decided that, as torture constitutes a serious violation of human rights, law enforcement personnel must be taught in their training programmes that it is prohibited in the procedures of which they are in charge. The institutions in question are:

(a) The Police Training College;

(b) The Training College for the Gendarmerie;

(c) The Training College for Customs Officers;

(d) The Training College for Civil Servants and Judges; and

(e) The Training College for Health and Social Workers.

The curricula of these colleges have recently been widened to include human rights in general (personal freedom, fundamental freedoms and protection of fundamental human rights).

57. The prohibition on torture is covered by official instructions issued by the various higher administrative authorities to which these law enforcement agencies report. The instructions also provide for disciplinary measures against persons who engage in torture.

Article 11

58. Under Senegalese legislation, the methods of investigations conducted by law enforcement agencies during police custody and detention before or after trial are kept under constant, systematic review.

(a) Police custody

59. Police custody is strictly regulated by articles 55 et seq. of the Code of Criminal Procedure, which lay down that members of the judicial police force have a duty, inter alia, to:

(a) Notify the person concerned of any measure taken against him;

(b) Inform the person of the reasons for this measure;

(c) Immediately inform the Government Prosecutor of the time when the measure began;

(d) Carry out interrogations and record in the police report the times of interrogation and rest periods, together with any incidents which might have occurred;

(e) Obtain the detainees signature of either the police report or a statement that he has withheld signature;

(f) Request the Government Prosecutor to authorize an extension of custody after the first 48 hours; the authorization must be express and bear the signature and seal of the law officer;

(g) If a request is made for an extension of custody, notify the person concerned beforehand and inform him or his right to be examined by a doctor and, if he so wishes, arrange for an examination to be carried out;

(h) At the end of the inquiry, sign the police report and obtain the signature of the person concerned or record the latter's refusal to sign;

(i) Bring the person concerned before the Government Prosecutor, who must be informed of any incidents or difficulties during this transfer.

60. Article 59 makes provision for disciplinary measures or penalties if the judicial police officer misuses his authority, i.e. carries out torture.

(b) Pre-trial detention

61. Pre-trial detention is ordered by the investigating judge, who is regarded as the most powerful person in the country, but whose powers are considerably restricted in Senegal by the provisions of the Code of Criminal Procedure. For example, if the investigating judge summons a person being prosecuted to appear before him, he must question that person immediately. This first hearing may not be postponed.

62. Once the investigating judge has issued a warrant to arrest a person and bring him before the court, the police must bring the suspect before the investigating judge immediately and he must be examined forthwith. Failing this, the suspect is taken to the nearest remand prison, where he may not be held for more than 24 hours, after which, the governor of this prison must bring the person before the Government Prosecutor who requires the investigating judge to hold a hearing. If the investigating judge is unable to do so, the presiding judge of the court or another judge appointed by him must conduct the hearing, or the arrested person must be immediately released (art. 116).

63. The detention of a person for more than 24 hours under a warrant to arrest and bring him before the court is regarded as arbitrary and the officials or judges responsible come under the provisions of article 110 of the Penal Code (art. 117 of the Code of Criminal Procedure).

64. Once the investigating judge has issued an arrest warrant, the person concerned must be heard within 48 hours of his arrest; otherwise the above-mentioned provisions concerning his immediate release apply.

65. If the arrest takes place outside the area of jurisdiction of the investigating judge who has issued the warrant, the suspect must be heard by the Government Prosecutor, who must inform the judge who issued the warrant and request the detainee's transfer (art. 183 of the Code of Criminal Procedure).

66. If the offence carries a prison sentence of two years or more, the investigating judge may not issue the committal warrant, which forms the basis of pre-trial detention, until he has held the first hearing. In this case, if the accused is lawfully domiciled in Senegal, he cannot be held for more than

five days after his first appearance in court. Persons charged with an offence carrying the above penalties and lawfully domiciled in the area of jurisdiction of the court to which the case has been referred may not be held in detention (art. 127 of the Code of Criminal Procedure).

67. However, these measures do not apply to persons accused of serious offences or crimes or to repeat offenders. Nevertheless, save in cases where pre-trial detention is compulsory (crimes or the misappropriation of public funds), the committal warrant issued by an investigating judge is valid for only six months, after which time it must be renewed by a reasoned order, against which an appeal may be lodged with the Indictments Chamber (art. 127 bis of the Code of Criminal Procedure).

68. In order to restrict the misuse of committal warrants by investigating judges, the law enables them to place the accused under court supervision on conditions which they may establish (art. 127 ter of the Code of Criminal Procedure).

69. At all events, an appeal may be lodged with the Indictments Chamber against any orders by the investigating judge which restrict the rights of the accused.

(c) Detention after trial

70. The enforcement of a sentence handed down by a criminal court is a matter for the Government Prosecutor's Office, which sends the prison governor an extract of the record of the court hearing, which the governor includes in his records.

71. The Government Prosecutor's Office is responsible for the judicial supervision of the enforcement of a prison sentence and the Regional or Departmental Committee oversees the administrative aspects. This committee is chaired by the governor of the region or prefect of the department, depending on the location of the prison. It meets every three months to supervise all aspects of detention in situ (penalty, health, hygiene, building, etc.).

72. The provisions of article 11 are echoed in other conventions ratified by Senegal, especially the Convention on the Elimination of All Forms of Discrimination against Women (art. 5), the International Convention on the Suppression and Punishment of the Crime of Apartheid (art. IV (a)), and the International Convention on the Elimination of All Forms of Racial Discrimination (art. 7).

Article 12

73. The implementation of this article of the Convention encounters serious obstacles in Senegal and this has led to much debate between the authorities of the country, on the one hand, and the United Nations human rights monitoring bodies and some non-governmental organizations, on the other. In order to have a better idea of the problem, this report must clearly describe the position under international and internal law and the facts at issue.

74. Basically, both international and Senegalese internal law are applicable.

International law

75. Article 12 of the Convention against Torture provides that "Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction".

Senegalese internal law

76. Article 79 of the Constitution stipulates that "Treaties or agreements duly ratified or approved shall, upon their publication, prevail over the laws, subject to each treaty or agreement being implemented by the other party".

77. Under article 32 of the Code of Criminal Procedure, "The Government Prosecutor shall receive complaints and reports of offences and shall determine what action is to be taken on them. When he decides to dismiss a complaint, he must inform the complainant of his decision, which is purely administrative, and indicate that it will be up to him to exercise the public right of action, at his own risk, by bringing a criminal indemnity action before the investigating judge".

78. Under article 2 of the Code, "A criminal indemnity action for loss or injury caused by any offence may be brought by any persons who have personally suffered loss or injury caused directly by the offence". It stipulates that "the public right of action may neither be stopped nor stayed by the victim's abandonment of a criminal indemnity action, except in one of the cases in which the public right of action may be extinguished, as provided for in article 6, paragraph 3, of this Code".

79. Article 3 of the Code states that a criminal indemnity action may be brought at the same time as the public right of action and before the same court. "This action shall be admissible for all types of loss or injury, both material and physical or mental, resulting from the offences forming the subject of the proceedings". "The injured party or party bringing the criminal indemnity action may institute proceedings before a criminal court to obtain compensation for loss or injury resulting from the offence forming the subject of the proceedings or for any other loss or injury resulting directly from the fault of the offender".

80. According to article 4 of the Code, "The criminal indemnity action may also be brought separately from the public right of action. Nevertheless, a decision on an action brought before a civil court shall be deferred until a final judgement has been handed down on the public right of action when it has been exercised by the prosecution".

81. Article 76 of the Code lays down that "Any person who, in accordance with this text, claims to have been injured by a crime or an offence may lodge a complaint with the investigating judge and bring a criminal indemnity action either by appearing in person, by being represented by counsel or by letter. The claimant shall specify at that time, or at a later time, the amount of compensation being requested for the loss or injury suffered".

82. Under article 78 of the Code, a criminal indemnity action may be brought at any time during preliminary investigations.

83. Amnesty laws also exist: the Act of 4 June 1988, the Act of 10 July 1991 and the Act of 8 July 1993. These legal texts were adopted by the Senegalese legislative authorities between 1988 and 1993 in response to the growing instability in the Casamance region, in the south of the country, after December 1982. Their aim was to enable the authorities to restore peace throughout the country whenever the opportunity arose and to repair the national social fabric, which had been damaged by events in this region.

84. Under article 8 of these texts, all offences and all principal, related, secondary or supplementary judgements in criminal or correctional cases were amnestied under the first articles. They were to be expunged forever from the police record of the persons concerned. Moreover, these texts prohibited any public servant or other official from referring to these offences or to the judgements relating to them under any pretext whatsoever.

85. As far as the facts at issue are concerned, it will be remembered that the 1980s were a time of serious instability in the Casamance region in the south of Senegal and that this resulted in the intervention of the armed forces to restore and maintain order. This conflict between the central Government and the separatist movement in the region (MFDC) took the form of armed confrontations leading to deaths and injuries on both sides.

86. One of these clashes, at Kaguitt on 1 September 1992 was particularly deadly, as it occurred the day after the agreement was signed between the Senegalese Government and the separatist movement. The latter broke its promises by suddenly taking up arms again. The security forces arrested many persons who were brought before the courts.

87. The 1993 agreement led to the release of all persons detained in connection with this event, even before trial. However, some Senegalese and international non-governmental organizations took up the Kaguitt file by lodging a complaint with the African Commission on Human and Peoples' Rights in Banjul and with the monitoring bodies of the Commission on Human Rights in Geneva. These complaints contained a list of the names of persons who had allegedly disappeared or been executed extrajudicially during the September 1992 events.

88. The Senegalese Government was questioned by both bodies and asked to conduct investigations in accordance with the provisions of article 12 of this Convention and to try and punish the guilty parties.

89. The Senegalese authorities pointed out that the amnesty laws had erased the memory of this tragic episode in Senegal and that, in their opinion, further reference to these events would jeopardize the peace which had already been established and even the stability of the country.

90. Another tragic event that occurred in 1993 was the assassination of the Vice-Chairman of the Constitutional Council of Senegal on 15 May. Several persons were implicated in this case and were questioned by officers of the national gendarmerie (Dakar squad). Some of these suspects were brought to trial and charged with murder or complicity in the crime.

91. The above-mentioned non-governmental organizations announced that some suspects had been tortured while they were in the custody of the gendarmerie. They produced press photographs to back up their allegations and demanded that the authorities should conduct investigations into these cases of torture, in the absence of complaints by the victims, who are alive and living in Senegal. Action similar to that of the non-governmental organizations was taken by the international human rights bodies.

92. In the meantime, two of the victims, Mr. Mody Sy and Miss Ramata Gueye, acting through their lawyers, lodged a complaint in due and proper form with the Dakar Government Prosecutor, who immediately conducted an investigation, which is now in progress. The Government Prosecutor was unable to act on any of the other reported cases, as none of the victims filed a complaint.

93. An event which occurred on 16 February 1994 led to the violent death of six police officers and some private individuals. Organizers of the march, which had led to riots, were arrested. While they were being held in custody in the premises of the Criminal Investigation Department, one of these persons, Lamine Samb, died. This gave rise to accusations from the aforementioned humanitarian organizations that Mr. Samb's death had been caused by torture carried out by the investigators and they demanded an investigation into this case. A complaint lodged by the dead person's family was followed by the opening of an investigation by the Dakar Government Prosecutor. This investigation, which is being conducted by the investigating judge, is likewise still in progress.

94. During these events in February 1994, opposition members of Parliament were arrested <u>inflagrante delicto</u> and brought before the courts on the grounds of complicity. Their cases also attracted the attention of the monitoring bodies in Geneva, but they were discharged and their cases were dropped. This at least shows that the Senegalese courts are independent and impartial.

95. The various events described above have prompted much discussion between the Senegalese authorities, on the one hand, and humanitarian organizations and the human rights monitoring bodies, on the other.

96. With regard to the presumed disappearances and extrajudicial executions in connection with the events in Casamance in general, the human rights monitoring bodies are demanding that impartial investigations should be conducted in accordance with article 12 of the Convention to identify the persons responsible, who would then be tried and punished. The Senegalese authorities have pointed out, in this connection, that the amnesty laws no longer permit such investigations, which would be likely to jeopardize the newly restored peace, national cohesion and the stability of public institutions.

97. The Senegalese authorities have received the reply that article 79 of their own Constitution gives the Convention precedence over the internal law of the State party to the international instrument. As the Convention is a multilateral international instrument reciprocally applied by several States parties, this situation is becoming a permanent problem.

98. The human rights monitoring bodies are also demanding that the Dakar Government Prosecutor should prosecute the persons responsible for the cases of torture committed during the investigations into the case of Babacar Seye and the events of 16 February 1994, in accordance with article 12 of the Convention. The Dakar Government Prosecutor is relying on the very clearly worded provisions of the Code of Criminal Procedure which define the rules for his action in criminal cases and the rules under which the victim may bring a criminal indemnity action.

99. He holds that, if the victims do not submit complaints to him because they do not intend to join their action with that of the prosecution, they are free to take separate action by bringing a criminal indemnity action before the investigating judge. If no complaint is filed, he does not institute proceedings. The human rights monitoring bodies are also referring to the contents of article 79 of the Constitution in requesting the Government Prosecutor to take the appropriate action.

100. These cases are thus becoming a dispute between the various parties concerned and the Senegalese authorities, i.e. a difference of opinion between those in favour of international law and those in favour of internal law as the basis of the peace, stability and, above all, national cohesion so dear to the Senegalese people and authorities.

Article 13

101. The victims of offences in general and of torture in particular are entitled to refer the matter to the courts in Senegal and they have several types of procedure at their disposal for doing so. The first is a complaint, which they may lodge with any judicial police officer having jurisdiction in the area, thus already suing for damages by bringing a criminal indemnity action (art. 16, para. 2 of the Code of Criminal Procedure). A complaint may also be lodged with the Government Prosecutor, who will order an investigation by the judicial police before instituting proceedings (art. 32 of the Code of Criminal Procedure). Likewise, a complaint, accompanied by a criminal indemnity action, may be filed with the investigating judge, who automatically institutes proceedings on behalf of the victim. Lastly, the accused may be summoned directly before a court, where the victim may directly produce the evidence in his possession and obtain a ruling.

102. The witness, who is under oath, tells the court what he has seen or heard in connection with an offence or a case. He must tell the truth, the whole truth and nothing but the truth; otherwise he is liable to a penalty for perjury. The Penal Code nevertheless provides him with effective protection against any intimidation or ill-treatment linked to his testimony on behalf of the parties to the proceedings.

103. There is a long list of cases in which victims of torture in police or gendarmerie stations have filed complaints and won their cases in Senegalese courts.

Article 14

104. Reference must be made to the provisions of article 2 of the Code of Criminal Procedure, under which anyone who has personally suffered loss or injury caused directly by any offence may bring a criminal indemnity action. Under article 3 of the Code, compensation may be claimed for all types of loss or injury, both material and physical or mental, resulting from the offences forming the subject of the proceedings. The text also states that the injured party may institute proceedings before a criminal court to claim compensation not only for loss or injury resulting from the offence forming the subject of the proceedings, but also for any other loss or injury resulting directly from the fault of the offender. It must be added that, if the loss or injury is the result of an act of a public servant or official, article 145 of the Code of Obligations of Public Servants stipulates that the State will be liable for compensation.

105. The combination of all these legislative provisions constitutes an absolute guarantee that any person who has been the victim of torture will be able to exercise his right to fair compensation under Senegalese law. It goes without saying that, if the after-effects of injury are such as to require the functional rehabilitation of a victim's limb, the victim will be entitled to compensation for this particular form of injury on the same conditions.

106. Judgements in criminal proceedings in which the guilty party is ordered to pay damages may be executed by imprisonment, the duration of which is determined by the trial court.

107. Compensation awarded in criminal indemnity actions for loss or injury resulting from torture can take the form of execution against real property, if a mortgage or charge has been registered as a means of execution by the investigating judge or the court in accordance with articles 87 bis and 342 bis of the Code of Criminal Procedure. Garnishment is also a means of executing a judgement against a defendant in a criminal indemnity action.

Article 15

108. In criminal proceedings, evidence for the prosecution comes from the Government Prosecutor and evidence for the defence is supplied by the defendant or accused. Nevertheless, when evidence is extorted by violence, it is of no value in court proceedings in Senegal. For example, courts of first instance or courts of appeal are wary of confessions, which are always a suspect form of evidence because they are very often obtained through physical or mental violence, i.e. by torture.

109. Thus, article 57, paragraph 2, of the Code of Criminal Procedure states that, if a person in custody refuses to sign the deposition or has signed it as a result of threats by the investigators, the deposition is null and void.

110. This article of the Convention is linked to articles of other conventions ratified by Senegal, i.e. articles 14, 15 and 16 of the International Covenant on Civil and Political Rights, article 5 (a) of the International Convention on the Elimination of All Forms of Racial Discrimination and article 15, paragraphs 2 and 3, of the Convention on the Elimination of All Forms of Discrimination against Women.

Article 16

111. It is sufficient here to refer to articles 106 et seq. of the Penal Code relating to acts infringing the freedom or safety of a person which are committed by officials and members of the public or legal service and which constitute offences punishable by imprisonment and fines, as well as by civic dishonour if the trial court finds that the offender has committed a crime in the exercise of his functions.

112. Mention must also be made of article 59 of the Code of Criminal Procedure, which relates to acts of torture that are carried out by members of the judicial police force on persons held in custody and may lead to disciplinary action against and the prosecution of the offenders.

113. Lastly, Decree No. 66-1081 of 31 December 1966 on the prison regime in Senegal prohibits prison warders from carrying out acts of torture on prisoners under their authority.

114. This article of the Convention is also linked to articles 6, 7 and 8 of the International Covenant on Civil and Political Rights and article 6 of the Convention on the Elimination of All Forms of Discrimination against Women.

115. Senegal has made the declaration referred to in article 22 that it recognizes at all times the competence of the Committee against Torture to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State party of the provisions of the Convention. Our country is also party to the Optional Protocol to the International Covenant on Civil and Political Rights, which gives the Human Rights Committee such jurisdiction with regard to Senegal. Moreover, this is what enabled the Committee to receive and consider communications from individual Senegalese citizens such as Mody Sy, Famara Kone and Ramata Gueye.

116. In conclusion, it must be acknowledged that the Senegalese people and their Government promote and protect human rights each and every day. In any event, the international community, represented by the United Nations system, can testify to the truth of this statement.